

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 20-21, 2019
From: Amber Hollister, General Counsel
Re: CSF Claim No. 2019-11 Deveny (Benike)

Action Requested

Consider Client Security Fund Committee's recommendation that the board grant claimant Kimberly Benike's claim of \$50,000 in the matter of CSF Claim No. 2019-11 Deveny (Benike).

Discussion

Claimant Benike hired Ms. Deveny in 2011 to represent her in obtaining damages for injuries sustained in a motor vehicle accident. She agreed to a contingent fee agreement, in which Ms. Deveny was to receive one-third of any settlement and 40% of any fee collected on or after the first day of trial or arbitration.

Ms. Benike's case went to trial, and on September 4, 2013, she was awarded a judgment in the amount of \$90,285. The investigation revealed that Ms. Deveny received the award, but never transferred any funds to Ms. Benike. Ms. Deveny claimed the judgment was being appealed, although it was not, and asserted that various personal emergencies prevented her from making a payment. Ms. Benike should have received 60% or \$54,171 of the total judgment, but she received nothing.

Ms. Deveny resigned Form B, effective July 26, 2018, while numerous disciplinary cases were pending. In 2018, Ms. Benike first learned about Ms. Deveny's alleged theft.

At its May 11, 2019 meeting, the Client Security Fund Committee reviewed Ms. Benike's claim and unanimously voted to recommend that the Board reimburse her for \$50,000 of her loss. (CSF Rule 4.7 capped at \$50,000 – claim is for \$91,000). Ms. Benike's claim would not ordinarily be eligible for reimbursement at this time, pursuant CSF Rule 2.1.6, because Ms. Deveny has not been found guilty of a crime and Ms. Benike has not obtained a civil judgment against her. The Committee, however, voted to waive the requirement of CSF Rule 2.1.6 based on extreme hardship under CSF Rule 2.6, based upon her circumstances and the available evidence.

Staff recommends that the board approve the claim in the amount of \$50,000, consistent with the CSF Committee's recommendation.

**Client Security Fund
Investigative Report**

Re: 2019-011
Claimant: Kimberly Benike
Lawyer: Lori Deveny
Investigator: Steve Bergmann

RECOMMENDATION

I recommend applying CSF Rule 2.6 with the hardship exemption, and approval of the claim in the amount of \$50,000.

CLAIM INVESTIGATION SUMMARY

In 2011, the claimant, Kimberly Benike, entered into an agreement with an attorney, Lori Deveny, to provide legal representation related to an event that resulted in an injury to Ms. Benike. The agreement specified that Ms. Deveny would be compensated on a contingent fee basis based on a 40% fee of any amount collected on or after the first day of trial or at any arbitration of the case.

Ms. Benike's case went to trial and she was awarded a judgement in the amount of \$90,285 on September 4th, 2013.

The investigation revealed that that Ms. Deveny received and diverted all of the judgement funds. Ms. Deveny provided many reasons to Ms. Benike for not transferring the funds, including that the judgement was being appealed and various personal emergencies experienced by Ms. Deveny. Ms. Benike has not received any funds as a result of the judgment.

Ms. Benike should have received 60%, or \$54,171, of the total judgement.

FINDINGS AND CONCLUSIONS

1. The claim is timely. (CSF Rule 2.1.8)
2. The claimant is the injured client. (CSF Rules 1.4 and 2.1.1)
3. The loss was caused by the lawyer's dishonest conduct. (CSF Rule 2.1.2)
4. The loss is not covered by any similar fund in another state. (CSF Rule 2.1.3)
5. The loss was not incurred by a financial institution covered by a "banker's blanket bond" or similar insurance or surety contract. (CSF Rule 2.1.4)
6. The loss did arise from, and was because of, an established lawyer-client relationship.